



## **PUBLIC EMPLOYEES' RETIREMENT BOARD**

**DECEMBER 22, 2005**

A meeting of the Board was called to order by President Carey at 9:00 a.m. Wednesday, December 22, 2005. All members of the Board were present, either in person or via conference phone. Board members and staff present were:

Carole Carey, President  
Betty Lou Kasten, Vice President  
Robert Griffith, Member  
Jay Klawon, Member  
Troy McGee, Member  
John Paull, Member  
Terry Smith, Member  
Melanie Symons, Counsel  
Linda Owen, Secretary

### **OPEN MEETING**

Vivian Hamel and Ann Brodsky, Governor's Office; Jim Kembel, TIAA-CREF; Sheri Heffelfinger, Legislative Services Division; John Barrows, Montana Newspaper Association; Lewis K. Smith, Smith Law Firm, P.C.; Terry Teichrow, PERS Member; Anita Teichrow; Kathy McGowan, MSPOA; Tom Schneider, MPEA; Sue Winchester, Great West Retirement Services; Matt Gouras, Associated Press; George Lane, Lee State Bureau; Tom Schneider, MPEA; Janet Kelly, Department of Administration; Kathy Samson, Defined Contributions Bureau Chief; Kim Flatow, Member Services Bureau Chief; Roxanne Minnehan, Fiscal Services Bureau Chief; Carolyn Miller, Administrative Officer; and Kelly Jenkins, Board Counsel, MPERA, attended the meeting.

**Public Comment** – Sheri Heffelfinger asked about public comment on each agenda item, with that being in law. Ms. Symons agreed that it is state law and common practice, which the Board already does.

Mr. Klawon commented on the report of investigations submitted by David Ewer, Vivian Hamel and Ann Brodsky. Mr. Klawon raised a question, from a fiduciary standpoint, on Barb Kain's comments reflected in this report. The Department of Administration had been paid \$7,000 by the Board to guide them through the hiring process for a new executive director. Mr. Klawon would like the Board's legal counsel to contact the Department of Administration and ask for any written policy on what is to be provided regarding an agency hiring someone from their Human Resource Department. Some investigation needs to be done on this and he would like to know what recourse the Board has to get their money back.

Mrs. Kasten would like to know under what authority they gave personal notes to "other people" when the Board members themselves were not allowed to keep their notes. Mr. Klawon added that there also seems to be "fabrications" in the report.

## **EXECUTIVE DIRECTOR'S REPORT – Mike O'Connor**

### **Executive Director Hiring Process**

Job Profile – Ms. Symons gave a summary of the subcommittee's process, pointing out review of the job profile comparisons and changes. CMS helped with finalizing the job profile, giving their expertise and recommendations. They made grammatical changes, as well as increasing the combination of years of education and experience from five years to seven years, which they felt was right for this type of position.

Ms. Kelly stated it was unfortunate the CMS consultants were not present to provide answers for their recommendations. In her review, ten years of education and experience was her preference. I limited to seven years, she also wanted three of those years to be in a senior leadership position. Although the profile does indicate "progressively responsible," Ms. Kelly felt a senior leadership position was clearer. Her recommendation for that inclusion was to assist the selection committee, who is reviewing the applications, to have an easier way to determine which candidates have the best backgrounds. When Mr. Paull asked Ms. Kelly the definition of "senior leadership," she said that you really cannot give a definition because a lot depends on the size of an organization. She referenced personnel decisions and program policy.

Mrs. Kasten stated the committee will rank the applicants according to their education and experience; however, her concern with requiring "senior management" experience is that it could limit the number of applications. There may be some really good people in different areas of employment, who have not yet attained senior management status. That could be put on the rating matrix for the evaluations. Mr. Klawon agreed with Mrs. Kasten and was concerned that could narrow down the application pool too much. Someone could have a lot of senior management skills, but perhaps no one-on-one personnel skills.

Mrs. Kasten felt the seven years of education and/or experience sounded reasonable. Applicants would be discounted for less than that, and given credit for more than that. It could be a benchmark, nothing more. Ms. Kelly said this was a difficult situation for her because she was new to the subcommittee and the subcommittee did not have an opportunity to confer as a collective group on the new version of the job profile. In addition, without CMS present, only speculation could be made. Mrs. Kasten reminded the Board that at the meeting when the subcommittee was informed Janet Kelly would be joining the subcommittee, the education requirement was discussed with CMS. Going to seven years was discussed slightly with CMS because no one disagreed with that suggestion. Therefore, Mrs. Kasten felt the job profile received from CMS was a workable one.

Mrs. Kasten moved to accept the proposed job profile from CMS as the Job Profile for the Executive Director position. Mr. Klawon seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

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Salary Range – Mr. O'Connor addressed the MOSERS Market Study Comparison of various market salaries for retirement system executive director positions. Approximately 75 retirement systems throughout the country were included in the survey. The survey is further broken down into categories. Mr. O'Connor felt it was reasonable to use the category "no portfolio managed internally." The average market salary for that category was reduced 15% to furnish the salary amount presented in the handout. With MPERA, generally, the entry level of the position is 80% of market, and then progresses to market within five years. The recommended market salary for the executive director position is: minimum - \$81,505; market - \$101,882; and maximum - \$122,258.

President Carey pointed out the Board needs to keep the budget in mind, staying under the statutory cap of 1.5% of benefits paid out. Depending on the circumstances, the range can be anywhere between 80% of market to market. The range to appear on the vacancy announcement would be from \$81,505 minimum to \$101,882 market. Ms. Kelly would like the salary advertised as \$101,882. She also questioned the impact of that salary on the Board's budget authority. Mr. O'Connor stated he would never recommend market salary increases that would jeopardize going over the cap. We have always been within budget. Mr. O'Connor likes to be conservative and not bump up against the cap. Mr. Klawon stated there were a lot of good applicants for the previous hiring process without increasing the salary.

President Carey noted that the Board went through a lengthy process with CMS to determine fair salaries for the entire staff, not just certain positions. By law, the Board cannot go over the budget cap. If we start bumping up against the budget cap, which employees would have to be laid off? A lot of thought and study went into this process and she felt the Board needs to stay where they are at. Mr. McGee felt the potential salary range being discussed is more than adequate and considerably more than what the current executive director is making. Mr. Klawon felt it would be fiscally irresponsible for the Board to pay more than what the market study suggests.

Ms. Kelly felt it would be helpful to know what impact another band would have on the budget cap. If there were modifications, could that be accommodated by the cap? Mr. O'Connor presented budget figures through October 31, 2005, stating we are projected to be under the budget cap by \$141,000. If there are any unexpected expenses, what are the options to ensure staying under that cap? Mr. Klawon was curious why Ms. Kelly thought it was necessary to increase the salary offered to a new executive director when qualified candidates applied at the previous salary offered. Ms. Kelly did not respond. Mr. Smith wanted more information on the other categories. Mrs. Kasten pointed out that salaries are the biggest expense. Mr. Klawon mentioned negative response by the press if the salary increased too much.

Mr. Griffith moved to accept the recommendation on the Band 8 market salary for the executive director position. Mr. Klawon seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

**Setting New Compensation Rates for Non-Union Employees** – The objective of the Board's pay plan is to get staff to the target market salary of their position. The Board's proposal for non-union staff should be the same approach as was determined for the staff included in the union bargaining unit. The bargaining unit ratified the proposal on December 14, 2005. Market progression will be implemented based on an employee's years of service in their current position. Mr. O'Connor recommended updating non-union employee salaries from the 2002 market salaries, so we are consistent in updating all salaries.

Mr. Griffith moved to adopt the Executive Director's recommendation for the non-union employees' pay plan. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

**Selection of Interim Director** – Mr. O'Connor felt there was a need for an interim executive director during the hiring process of a new executive process. He recommended Roxanne Minnehan for the position and felt she would do a good job for the Board. This in no way limits her ability to apply for the executive director position, if she so chooses. Mr. Griffith moved to accept the Executive Director's recommendation of Roxanne Minnehan for Interim Executive Director. Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Mr. O'Connor recommended that Ms. Minnehan receive 80% of market as differential pay - \$81,505, while in the position of acting executive director. Mrs. Kasten felt the Board should consider Mr. O'Connor's and Ms. Minnehan's current salaries and figure something within that range. She suggested a 20% increase in Ms. Minnehan's salary, which would put it at approximately \$75,900. Mr. O'Connor stated this is a difficult position and the spokesperson for the agency. Mr. Griffith made a motion that the differential pay for Roxanne Minnehan, as acting director, would be 80% of executive director market salary - \$81,505. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with six of the attending members voting aye, and Mrs. Kasten voting nay.

**Review and Respond to Grievance** – President Carey addressed the grievance filed by Terry Teichrow regarding the Board's decision to void his contract of employment as executive director. Ms. Symons noted that Mr. Teichrow and his attorney, Lewis Smith, were in attendance.

Mr. Smith addressed the Board on the issue of making this part of the meeting closed. It was their position that this was a grievance involving Mr. Teichrow's employment with regard to the position as executive director. Mr. Smith felt that, clearly, under the Montana Constitution in both section 9 and 10, the argument of the right to know and the right to privacy, Mr. Teichrow's individual right to privacy in the discussion with regard to his grievance outweighs the public's right to know in this situation. On that basis, they requested the Board to close this portion of the meeting.

Ms. Symons' recommendation was that this matter should be open. She does not view it as a personnel issue, but solely a legal issue. The Board previously determined to void Mr. Teichrow's contract. That contract was voided. Whatever is now done with the grievance should be based only on the legal decision to void that contract, not on any type of personal activity as a job applicant or employee. It is not a disciplinary procedure, and there should be no discussion by this Board regarding anything personal to Mr. Teichrow and his abilities for this position. It was Ms. Symons' opinion that the meeting should remain open.

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Mr. Smith responded that the Montana Supreme Court has found that even the applications of people applying for positions are matters that can be closed, and should be closed with regard to the privacy issues of those people. With regard to Mr. Teichrow, he was not just an applicant, he was hired by the Board into the position. He was in the job for three days prior to the Board's notice that his employment contract was terminated. On that basis, it was their position that Mr. Teichrow was an employee and as such, this grievance needs to be treated as an employee matter.

President Carey asked for a third person opinion from Mr. Jenkins. Mr. Jenkins agreed with Ms. Symons that this is not a matter that involves any personal information from Mr. Teichrow. The legal question at hand should be the only subject matter of discussion. That legal question is not something that carries any personal privacy rights, it is a matter of public discussion. The Board could leave the meeting open without fear of reprisal. That would be a matter for the Board Chair to make the decision.

John Barrows, Executive Director of the Montana Newspaper Association (MNA), addressed the Board stating the MNA has been following this very closely. He agrees with Board counsel's advice, that this is not a matter where personal privacy outweighs the public's right to know. Ann Brodsky, legal counsel for Governor Schweitzer, agreed with Mr. Barrows and read an excerpt from the Administrative Regulations of Montana (ARM) concerning grievance procedures. The action the Board took in voiding the offer of employment to Mr. Teichrow was in no way a disciplinary matter and given that, Ms. Brodsky feels there is no basis for closing this portion of the meeting.

Mr. Lewis rebutted the contention that this is not a disciplinary matter. The ultimate disciplinary action is a termination of one's position and that is what has happened to Mr. Teichrow in this case. On that basis, they are asking that his rights to privacy be recognized and the board meeting be closed.

Ms. Symons advised the Board that, at this point, all they are doing is deciding whether the meeting should be open or closed. Once that is decided, Board counsel can go into more discussion of what the Board's next steps will be. She explained that the meeting can remain open because the Board was voiding a contract, which means it never existed, so there was no employment to be terminated. This is not a termination or disciplinary proceeding. It is solely based on the Board's decision to void the contract.

There being no more comments, President Carey determined that, with the advice of Board counsel, the meeting would remain open. As a result of that decision, Mr. Smith added the breach of the privacy right of Mr. Teichrow to the grievance.

A determination was then made on whether to honor or reject the grievance. Following the advice of Board counsel, Mrs. Kasten moved to deny the grievance. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with six of the attending members voting aye, and Mr. Klawon voting nay.

**Sub-Committee's Next Steps** – The subcommittee has a lot of work yet to do: discuss length of time to advertise position, where to advertise position, recruitment process and timetable, screening questions and scoring matrix, and identifying which issues and meetings are public or private. Mrs. Kasten welcomed suggestions from Board members not on the subcommittee. Mr. Smith provided a list of newspapers he would like the advertisement be sent to. President Carey felt six weeks of advertising would be adequate, with the hopes of bringing a new executive direction on board as soon as possible since the next legislative session is only a year away. NASRA would also be good source for advertising. President Carey felt the MPERA has an excellent staff and, and her concern and hope is that whoever gets the position will support the staff and their concerns. A question with respect to personnel matters should be added. Mr. McGee felt the questions were good, but could be expanded upon or added to, including a media-related question. Mrs. Kasten asked for Board comment on education requirements. President Carey reiterated that CMS are the experts in this area and she felt that requirements they have recommended are adequate. Board counsel will be identifying which meetings and which issues are to be private or open to the public.

**Legislative Special Session Update** – Mr. O'Connor provided a list of bills that were introduced in the special session and gave a brief update.

HB1 - Appropriation of funds - passed. Mr. O'Connor requested that David Ewer, Budget Director, advise this Board when they can anticipate receiving that money to assure that we can have the Board of Investments (BOI) invest that money the same day it is received. Mr. O'Connor also asked Carroll South how the BOI anticipates investing that money, to make sure the Board knows where that money went. The DC plan loan was not part of HB1.

HB2 passed, expanding the duties of the Interim Committee to take a closer look at retirement proposals.

HB6, introduced by Representative Golie, died in process. Mr. O'Connor suggested the summary referenced in HB6 be included in a newsletter to our members.

President Carey would like staff to prepare a newsletter as soon as possible. There has been a lot of negative press and members need to be reassured that retirement checks and things of that nature are not in danger. Members will not lose benefits.

Mr. O'Connor explained that the CPERS-like interim committee will be a part of the State Administration and Veterans' Affairs (SAVA) committee as an "additional duty."

**Open Meeting Update** – Ms. Symons advised the Board that John Shontz (MNA), represented by John Barrows at this meeting, feels the Board should be publishing their board meeting notices in the newspaper (where the meeting is held). Ms. Symons did not agree with the intent of the case law Mr. Shontz used as authority (Section 18-7-201, MCA). Rather, the Montana Supreme Court, citing Section 2-3-103, MCA, had held that state agencies (including the Board) must develop procedures for permitting and encouraging the public to participate in agency decisions. Ms. Symons stated the Board has done so. They have a policy for noticing meetings, and as long as they follow their policy, they are okay.

John Barrows stated the concept of advertising in the newspaper is not a revenue issue for the newspapers, but would be for an archivable definite proof of notification to the public.

**Miscellaneous** – Mr. Klawon would like on the next meeting agenda, review of the policies of the Human Resource Division for the Department of Administration. He would like to see what it was the Board should have been getting for their \$7,000, compare that to the testimony Barb Kain gave Mr. Ewer and associates, and discuss what the Board's next plan of action would be.

Ms. Symons updated the Board on the Governor's lawsuit. The Governor's Office filed a Response Brief stating they had no objection to a Motion to Dismiss. However, they wanted it to be without prejudice.

Mr. Klawon moved to adjourn the meeting. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.